

WHO QUALIFIES AS A FARMER, RANCHER OR TREE FARMER?

The law defines a farmer or rancher as someone who receives more than 50% of their income from “the trade or business of farming.” Internal Revenue Code (IRC) 2032A(e)(5)) defines activities that count as farming:

- Cultivating the soil or raising or harvesting any agricultural or horticultural commodity (including the raising, shearing, feeding, caring for, training, and management of animals) on a farm;
- Handling, drying, packing, grading, or storing on a farm any agricultural or horticultural commodity in its unmanufactured state, but only if the owner, tenant, or operator of the farm regularly produces more than one-half of the commodity so treated; and
- Planting, cultivating, caring for, or cutting of trees, or the preparation (other than milling) of trees for market.

WHAT ABOUT DEDUCTIONS FOR BARGAIN SALES OR GIFTS OF LAND?

The tax provision also applies to bargain sales of conservation easements that qualify under Internal Revenue Code (IRC) 170(h). The provisions do not apply to donations of land in fee, however, other tax incentives may apply.

Your own tax result will depend on a variety of factors, including the conservation strategy you've chosen to protect your land, the value of your gift, and your personal financial situation. For a more complete understanding of how federal, state, and local tax laws affect your particular situation, and the potential tax treatment of your land conservation, you should consult with your accountant, financial advisor, or attorney.



To learn more, visit www.UVLT.org
or contact Peg Merrens, Vice President, Conservation
peg.merrens@uvlt.org

Enhanced federal incentives for land conservation

INCOME TAX BENEFITS FOR CONSERVATION EASEMENT DONORS

To recognize the generosity of landowners who donate easements and to encourage voluntary land conservation, Congress has provided that gifts of conservation easements are treated as charitable contributions for federal income tax purposes. Recent changes to the federal tax law make it more likely that moderate income landowners will be able to deduct the full value of their conservation easement gifts.

Under the tax law, conservation easements are treated more favorably than other types of charitable gifts. Family farmers, ranchers, foresters, and moderate-income landowners now have an opportunity to obtain fair recognition of their charitable donation.

The provisions and requirements summarized here are intended to provide general background and points of reference concerning charitable contributions and conservation easements. Since tax laws are subject to change at any time, landowners should consult their own tax advisor for the most current information.



Upper Valley Land Trust
19 Buck Road • Hanover, NH • 603-646-6626 • www.UVLT.org

WHAT IS A CHARITABLE GIFT?

The first step in figuring a potential tax deduction is to determine whether the donation is a charitable gift in the eyes of the IRS. Key requirements for a conservation easement or outright gift of land include:

- The gift must be made to a public agency or to a qualifying 501(c)3 organization such as the Upper Valley Land Trust.
- The gift must be a true gift for which no benefit is anticipated in exchange. For example, a conservation easement given to a land trust by a developer in exchange for government approval of a subdivision is not a gift.
- The gift must be complete and irrevocable, without contingencies or strings attached. For example, a condition that ownership of a property will revert to the donor or an easement will be extinguished if the land trust does not meet certain performance standards would make the donation non-deductible.
- The easement must meet certain standards and fulfill conservation purposes established by Congress for permanent open space protection and public benefit. An easement does not have to provide public access to qualify as a charitable gift.

Additional requirements and definitions are set forth in Section 170(h) of the Internal Revenue Code and related Treasury Regulations.

SUBSTANTIATING THE VALUE OF YOUR GIFT

To claim a tax deduction for a gift worth more than \$5000, including land or a conservation easement, the donor must obtain a “qualified appraisal” by a “qualified appraiser” (cash and publicly traded securities are exceptions). In general, the value of a conservation easement is equal to the difference between the fair market value of the property before and after the easement is donated.

Generally, a qualified appraiser is one who is qualified to make appraisals of the specific type in question (such as a conservation easement), and whose relationship to the taxpayer and donee would not cause a reasonable person to question the appraiser’s independence. UVLT cannot provide the appraisal itself, but can give you a list of appraisers with experience in appraising gifts of land and conservation easements.

The appraisal must state the fair market value of the gift as of the date of the contribution. IRS requires that the appraisal must not be completed earlier than 60 days before the date of the gift, or it may be completed at any time after the gift, but before

submitting tax returns for the year in which the gift was made. (UVLT can work with you and your appraiser to correlate these timing issues.) The appraiser’s report must meet IRS standards, and a summary of the appraisal (IRS Form 8283), signed by the land trust and the appraiser, must be attached to the donor’s income tax return.

The updated tax law includes specific appraisal standards for conservation easement valuation and strong penalties for appraisers who violate the standards.

CALCULATING YOUR POTENTIAL TAX BENEFIT

The tax incentive enables conservation easement donors to:

- Deduct up to 50% of their adjusted gross income in any year;
- Deduct up to 100% of their adjusted gross income if the majority of that income came from farming, ranching or forestry (e.g., pay no federal income tax); and
- Continue to take deductions for as long as 16 years.

Example: Mr. & Mrs. Brown own 80 acres of land with significant conservation value that they want to protect forever. Their annual taxable income is \$50,000. They donate a conservation easement to a land trust. A qualified appraiser determines the value of the conservation easement is \$150,000. The Browns are allowed to deduct 50% of their taxable income and have 16 years to use up the donation. Assuming that their annual income remains constant, they could deduct \$25,000 in the year of the gift and for five subsequent years. If the Browns were qualified farmers, they could deduct \$50,000 for three years.

OTHER DEDUCTIONS ASSOCIATED WITH GIFTS OF CONSERVATION EASEMENTS:

Landowners receiving a tax deduction for their charitable contribution of an easement may also deduct some of the costs incurred in making the donation. Survey costs, legal fees, and appraisal fees may be deductible under “Miscellaneous Deductions” (although they are not charitable deductions) to the extent that, in combination with various other miscellaneous deductions, they exceed 2% of your adjusted gross income.

In addition, any cash or securities given to a non-profit land trust to endow management of the property or administration of its easements (including contributions to UVLT’s Stewardship Fund) qualify as a tax deductible charitable contribution.